International Union of Operating Engineers, Local No. 139 *and* McWad, Inc. and Market & Johnson, Incorporated and Laborers International Union of North America Local 1359

Laborers International Union of North America Local 1359 *and* McWad, Inc. and Market & Johnson, Incorporated and International Union of Operating Engineers, Local No. 139. Cases 30-CD-95 and 30-CD-97

July 27, 1982

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by McWad, Inc., herein called the Employer, alleging that International Union of Operating Engineers, Local No. 139, herein called the Operating Engineers, has violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to its members rather than to employees represented by Laborers International Union of North America Local 1359, herein called the Laborers. The Employer also filed a charge alleging that the Laborers had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to its members rather than to employees represented by the Operating Engineers.[1]

Pursuant to notice, a hearing was held before Hearing Officer Sharon A. Gallagher on July 30 and on August 26, 1981. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Thereafter, the Employer and the Operating Engineers filed briefs.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The parties stipulated, and we find, that the Employer, a Wisconsin corporation with its principal place of business in Wausau, Wisconsin, is engaged in the business of masonry contracting. During the past calendar year, a representative period, the Employer purchased and received goods and services from points located directly outside the State of Wisconsin valued in excess of $50,000. The parties also stipulated, and we find, that the Employer is an employer within the meaning of Section 2(2) of the Act, and that it is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

The parties stipulated, and we find, that Market & Johnson, Incorporated, a Wisconsin corporation with its principal place of business in Eau Claire, Wisconsin, is engaged in the business of general contracting. During the past fiscal year, a representative period, Market & Johnson purchased and received goods and services from points located directly outside the State of Wisconsin valued in excess of $50,000. The parties also stipulated, and we find, that Market & Johnson is an employer within the meaning of Section 2(2) of the Act, and that it is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

We further find that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that the Operating Engineers and the Laborers are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *Background and Facts of the Dispute*

The Employer is a member of the Mason Contractors Association of America, Inc., and is bound to the master collective-bargaining agreement between that organization and Laborers International Union of North America. In February 1981,[2] the Employer entered into a subcontracting agreement with Market & Johnson, the general contractor for the construction of the Employer's Insurance of Wausau Training Center. Market & Johnson is a member of the Associated General Contractors of Wisconsin, which is a party to a master agreement, known as the Area II Agreement, with the Operating Engineers. In its subcontracting agreement with Market & Johnson, the Employer agreed to perform masonry work and cavity wall insulation at

[1] The Employer also filed a charge in Case 30-CD-98 alleging that the Operating Engineers had violated Sec. 8(b)(4)(D) at another site. At the hearing the Employer withdrew that charge.

[2] Unless otherwise specified, all dates herein refer to 1981.

the construction site of the Employer's Insurance of Wausau Training Center.

In March the Employer began to perform the masonry work, including the disputed work, with its employees represented by the Laborers. On April 9, the Operating Engineers filed a grievance against Market & Johnson, claiming that the latter had violated a contractual provision forbidding the subcontracting of bargaining unit work to an employer who is not a signatory to an agreement with the Operating Engineers.[3] Subsequently, Market & Johnson indicated that it would refuse to arbitrate the grievance since it viewed the matter as a jurisdictional dispute.

On June 11, the parties conducted a meeting to attempt to resolve the dispute. The first part of the meeting was attended by Marvin Market, president of Market & Johnson; Lynn Le Gault, counsel for the Associated General Contractors; Don Shaw, president of the Operating Engineers; and Louis Yuker, the Operating Engineers business representative. According to Market's testimony, Shaw stated that the disputed work should be performed by employees represented by the Operating Engineers, and that if such an assignment were not made then the Operating Engineers would picket the jobsite on the following Monday. Shaw testified that he told Market that the Operating Engineers alternatives were either to file an unfair labor practice charge with the National Labor Relations Board, or to picket the jobsite in order to advertise Market & Johnson's refusal to arbitrate. Subsequently, the parties were joined by Al Milak, an International representative of the Laborers; Dennis Henrichs, the Laborers business manager; and McWad's president, Victor Wadzinski. According to Market's testimony, after some discussion Market accused Shaw of having previously threatened to picket the jobsite if the disputed work were not assigned to employees represented by the Operating Engineers. Shaw did not respond, and the meeting ended without a resolution of the matter.

A conference call was arranged on the following day, June 12, between Market, Le Gault, Wadzinski, and others. During this conversation, Wadzinski agreed to have the disputed work performed by employees of Market & Johnson represented by the Operating Engineers. Market testified that pursuant to the agreement McWad would have "total control" over the employees including the authority to direct their activities on a daily basis and to fire them if necessary. Market indicated that, although the employees were to remain on Market & Johnson's payroll, McWad was to reimburse Market & Johnson for the cost of the employees. The Laborers was informed of this arrangement, and the employees represented by the Operating Engineers began performing the disputed work. On June 15, the Laborers forwarded to Wadzinski a letter stating that the Laborers would engage in picketing or other appropriate action if the disputed work were not assigned to its members. The Employer filed a charge on June 18 alleging that the Operating Engineers had violated Section 8(b)(4)(D) of the Act. On July 30, the Employer filed a similar charge with respect to the Laborers.

B. *The Work in Dispute*

As set forth in the notices of hearing, the work in dispute consists of the operating of forklifts and skid loaders at the construction site of the Employer's Insurance of Wausau Training Center in Wausau, Wisconsin. The parties further agree that the disputed work is limited to the operation of forklifts and skid loaders used in connection with the Employer's masonry work at that location.

C. *Contentions of the Parties*

The Employer contends that the disputed work should be awarded to employees represented by the Laborers based on employer past practice and preference, economy and efficiency of operation, the collective-bargaining agreements, area practice, and skills.

The Operating Engineers brief initially contends that there is no reasonable cause to believe that Section 8(b)(4)(D) has been violated. Assuming such reasonable cause exists, it is also the contention of the Operating Engineers that the disputed work should be awarded to employees whom it represents based on the collective-bargaining agreements, interunion agreements, previous awards of the Impartial Jurisdictional Disputes Board and its predecessor, area practice, skills, and economy and efficiency of operation.

It is further argued by the Operating Engineers that the preference and past practice of Market & Johnson, rather than that of the Employer, should be given weight, since Market & Johnson controls the assignment of the work in dispute. The Board has considered this argument and has concluded that under the circumstances of this case it is the preference and past practice of the Employer, rather than that of Market & Johnson, which should be considered as a factor in determining the dispute. We note initially that in cases involving similar circumstances the Board has considered the

[3] The text of this provision is contained in fn. 10, *infra*.

subcontractor's, and not the general contractor's, preference and past practice.[4]

Furthermore, we reject the Operating Engineers contention that Market & Johnson controls the assignment of the disputed work. We note that the subcontracting agreement between Market & Johnson and the Employer is silent on this issue, and that it was the Employer's decision to assign the work to employees represented by the Laborers in the first instance. Additionally, the record does not disclose in any detail the circumstances surrounding the decision on June 12 to reassign the work to employees represented by the Operating Engineers. Marvin Market testified only that in the course of the conference call on June 12 the Employer's president, Wadzinski, "agreed" to have operating engineers perform the work. Market further testified that he could "ask" the Employer to take certain action, but acknowledged that he did not know if Market & Johnson was in a legal position to "demand" that the Employer do so. Wadzinski indicated that avoiding a work stoppage was a factor considered in the decision. Even though Market & Johnson probably exerted some pressure on the Employer to change the assignment, there is nothing to indicate that the Employer did not retain the right to choose the employees to whom the assignment would be made. Contrary to the Operating Engineers contention, therefore, the limited evidence does not indicate that Market & Johnson unilaterally imposed the decision on the Employer.[5]

It should also be noted that under the terms of the June 12 agreement the Employer retained the right to fire the employees and to direct their activities on a daily basis. Indeed, Market conceded that the Employer possessed "total control" over the daily activities of the employees. Although the employees remained on Market & Johnson's payroll, the Employer was obligated to reimburse Market & Johnson for the cost of the employees.

In view of the foregoing, we find that the evidence is sufficient to establish that Market & Johnson exercised control over the work assignment, and we conclude that on June 12, the Employer retained the control which it had previously exercised. Under the circumstances, we will therefore consider the Employer's preference and past practice in determining the merits of the dispute.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed upon a method for the voluntary adjustment of the dispute.

As noted above, Marvin Market testified that, at the first part of the meeting on June 11, Don Shaw stated that the disputed work should be performed by employees represented by the Operating Engineers, and that if such an assignment were not made then the Operating Engineers would picket the jobsite on the following Monday. According to Market's testimony, during the second phase of the meeting when Wadzinski and representatives of the Laborers were present, Market accused Shaw of having previously threatened to picket the jobsite if the disputed work were not assigned to operating engineers. At that time Shaw did not respond to the accusation. Shaw does not deny stating that the Operating Engineers might picket, but he asserts that he indicated only that the Operating Engineers might picket to advertise Market & Johnson's refusal to arbitrate the grievance. Additionally, it is undisputed that, by letter dated June 15, the Laborers threatened to picket or take other appropriate action if the disputed work were not assigned to its members.

At the hearing the Operating Engineers contended that both Unions were bound to submit disputes to the Impartial Jurisdictional Disputes Board. However, the Operating Engineers conceded that it has no knowledge of whether the Employer is bound to that procedure, and no evidence was adduced at the hearing to demonstrate that the Employer is so bound. The Employer asserts that it is not a signatory to any agreement providing for the submission of disputes to the Impartial Jurisdictional Disputes Board.

Therefore, on the basis of the entire record, we conclude that there is reasonable cause to believe that both the Operating Engineers and the Laborers have violated Section 8(b)(4)(D) of the Act,[6]

[4] See *Local 114, International Association of Bridge, Structural, Ornamental and Reinforced Ironworkers, affiliated with the Ironworkers Northwest District Council, AFL-CIO (Seattle Chapter of Associated General Contractors of America, Inc.)*, 238 NLRB 906 (1978); *Local 282, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Active Fire Sprinkler Corp.)*, 233 NLRB 1230 (1977); *Glaziers and Glassworkers Local Union No. 767 (Sacramento Metal & Glass Co.)*, 228 NLRB 200 (1977).

Member Hunter agrees that it is the Employer's preference and past practice, rather than that of Market & Johnson, which should be considered in determining the dispute. In doing so, however, he places no reliance on the cases cited in this footnote.

[5] In this connection Al Milak testified that it was his understanding that Market & Johnson made the decision to reassign the work. However, we do not view his testimony as decisive since he was not a participant in the conference call of June 12, during which the decision to reassign the work was made.

[6] The Operating Engineers contends that there is a conflict between the testimony of Shaw and Market concerning Shaw's statements at the June 11 meeting. However, even if we assume that there is a legally sig-

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and we further conclude that there exists no agreed-upon method for the voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that this dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various factors.[7] The Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and experience reached by balancing those factors involved in a particular case.[8]

The following factors are relevant in making the determination of the dispute before us:

1. Collective-bargaining agreements

Through its membership in the Mason Contractors Association of America, Inc., the Employer is bound to the master collective-bargaining agreement between that organization and Laborers International Union of North America. Article III of that agreement provides, in pertinent part:

> Jurisdiction. The work jurisdiction covered by this Agreement when performed by members of the ASSOCIATION . . . shall include that work which has been historically or traditionally or contractually assigned to members of the LABORERS' INTERNATIONAL UNION OF NORTH AMERICA in the tending of Masons including unloading, mixing, handling, and conveying of all materials used by Masons by any mode or method . . . .[9]

The Area II Agreement, to which Market & Johnson and the Operating Engineers are bound, contains a provision forbidding the subcontracting of work to employees who are not signatories to an agreement with the Operating Engineers, and a provision indicating that the operation of forklifts on construction jobsites is exclusively the craft work of the Operating Engineers.[10] We note, however, that the Employer is not a party to the Area II Agreement and has not agreed to be bound by its terms.[11] We therefore find that the Area II Agreement does not favor an award of the work in dispute to employees represented by the Operating Engineers.[12]

On the other hand, the contract between the Laborers and the Employer provides that the Laborers has jurisdiction over work involving the "unloading, mixing, handling, and conveying of all materials . . . by any mode or method." In view of the broad language of that provision, we find that the collective-bargaining agreements favor an award of the work in dispute to employees represented by the Laborers.

2. Employer and area practice

The Employer submitted into evidence a list of various masonry subcontracting jobs which it had performed from 1978 to 1981. The list disclosed 12 jobs in 1978, 23 jobs in 1979, 11 jobs in 1980, and

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nificant conflict in the evidence, we note that in a proceeding under Sec. 10(k) the Board is required only to find that there is reasonable cause to believe that Sec. 8(b)(4)(D) has been violated. In so finding, we need not conclusively resolve conflicts in testimony. See *International Brotherhood of Electrical Workers, Local Union 103 of Greater Boston (Maki Electrical, Inc.)*, 227 NLRB 1745, 1746 (1977). We also reject the Operating Engineers' contention that the Laborers' threat of June 15 was nothing more than a "friendly" attempt to provide the Employer with a basis for filing a charge. We note that the Laborers' contract with the Employer calls for the assignment of the disputed work to employees whom it represents, and that there is nothing to indicate that the picketing threat was not serious. See *Glaziers and Glassworkers Local Union No. 767 (Sacramento Metal & Glass Co.), supra* at 201.

[7] *N.L.R.B. v. Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO [Columbia Broadcasting System]*, 364 U.S. 573 (1961).

[8] *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402 (1962).

[9] At the hearing Carl E. Booker, the assistant director of jurisdiction for Laborers International Union of North America, indicated that the Laborers would claim the use of forklifts in connection with masonry work, but not normally in connection with nonmasonry work. Booker also testified that the Laborers would not normally claim the work of operating power cranes and cherry pickers.

[10] The text of these provisions reads, in pertinent part:

> Section 4.1. UNION SUBCONTRACTOR: The Contractor agrees that, when subletting or contracting out work covered by this Agreement which is to be performed within the geographical coverage of this Agreement at the site of the construction, alteration, painting, or repair of a highway, building, structure or other work, he will sublet or contract out such work only to a subcontractor who has signed, or is otherwise bound by, a written labor agreement entered into with the Union.
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> Section 7.8 FORKLIFT ASSIGNMENT: The operation of forklift trucks on construction jobsites (excluding warehouse and storage yards as per Teamsters Operating Engineers International Agreement) is exclusively the craft work of the Operating Engineers and assignment of said operation shall be made to an Operating Engineer, dispatched and covered by the terms and conditions of this Agreement.

[11] The subcontracting agreement between the Employer and Market & Johnson does not purport to bind the Employer to the Area II Agreement, and it does not contain any reference to work assignment.

[12] The Board was confronted with a similar situation in *Local 282, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Active Fire Sprinkler Corp.), supra* at 1232–33. In that case the general contractor and one of the unions involved in the dispute were parties to a contract which arguably covered the disputed work. The Board gave no weight to the contract since the employer-subcontractor was not a party to the agreement and had not agreed to be bound by its terms. See also *International Association of Bridge, Structural & Ornamental Iron Workers, Local No. 21 (Lueder Construction Company)*, 233 NLRB 1139, 1140 (1977), where the Board found that the "[general contractor's] contractual obligations cannot be conferred upon [the subcontractor], absent record evidence establishing that [the subcontractor] had agreed to be bound by those obligations." We also note that the Employer does not have a collective-bargaining agreement with the Operating Engineers. See *Glaziers and Glassworkers Local Union No. 767 (Sacramento Metal & Glass Co.), supra* at 201–202. See also *Local 114, International Association of Bridge, Structural, Ornamental and Reinforced Ironworkers, affiliated with the Ironworkers Northwest District Council, AFL-CIO (Seattle Chapter of Associated General Contractors of America, Inc.), supra* at 908.

15 jobs in 1981. Wadzinski testified without contradiction that the Employer had used laborers to operate the forklifts on all of these jobs. The record discloses that 10 years prior to the hearing the Employer had a collective-bargaining agreement with the Operating Engineers which provided that employees represented by the Operating Engineers were to handle forklifts. There is no evidence that the Employer has used employees represented by the Operating Engineers to operate forklifts since that time. Of course, under its current collective-bargaining agreement with the Laborers, the Employer is obligated to assign such work to employees represented by the Laborers. In view of the foregoing, we find that the Employer has an established practice of assigning the work of operating forklifts and skid loaders in connection with masonry work to employees represented by the Laborers. Accordingly, we find that the factor of employer practice favors an assignment of the disputed work to employees represented by the Laborers.

We further find that the record discloses insufficient evidence to establish an area practice with regard to the disputed work. George A. Miller, the executive vice president of the Mason Contractors Association of America, Inc., testified that a recent survey of 50 mason contractors in the State of Wisconsin found that 93 employees represented by the Laborers were used by the contractors to operate their equipment, while only 18 employees represented by the Operating Engineers were used for similar tasks. On the other hand, Donald Shaw, testified that, of the 66 employers in Wisconsin who are bound to the Area II Agreement, 98 percent use operating engineers to operate forklifts in connection with construction work. Accordingly, we find that the factor of area practice does not favor an award of the disputed work to employees represented by either Union.

3. Economy and efficiency of operation

George Miller, the executive vice president of the Mason Contractors Association of America, Inc., testified that, when a laborer is not engaged in operating a forklift, he performs other tasks in connection with masonry work, including mixing mortar and supplying the mason with brick and block, mortar, and various other materials. Miller indicated that operating engineers are not trained to perform such tasks. His testimony in this regard was corroborated by the testimony of Dennis Henrichs, the business manager for the Laborers.

Evidence was also adduced to indicate that operating engineers are capable of handling other equipment, such as skip hoists and end loaders, when not engaged in the operation of the forklift. The record discloses that forklifts can lift materials only to a height of approximately 36 feet, and that a skip hoist must be used to lift materials to a higher elevation. It is therefore the contention of the Operating Engineers that, if masonry materials had to be lifted higher than 36 feet, the task would have to be performed by an operating engineer.

It thus appears that both laborers and operating engineers would perform other work at those times when the disputed work is not being performed. Accordingly, we find that the factor of economy and efficiency of operation does not favor an award of the disputed work to employees represented by either Union.

4. Relative skills

At the hearing evidence was presented which indicated that the skills necessary to perform the disputed work are possessed by employees represented by the Operating Engineers as well as by employees represented by the Laborers. We therefore find that this factor is inconclusive in determining the award of the disputed work.

5. Interunion agreements

The Operating Engineers submitted into evidence a 1954 memorandum of understanding which was agreed upon by the Internationals of both the Operating Engineers and the Laborers. The memorandum notes the existence of disputes arising in the construction industry between the two organizations, and provides that "[w]ith regard to forklifts and other similar type of equipment, the operation of same will be by members of the International Union of Operating Engineers . . . ." It is contended by the Operating Engineers that this agreement favors an award of the disputed work to employees whom it represents.

The Board has observed that such an agreement does not carry significant weight in the absence of evidence that all parties have agreed to be bound by it.[13] There is no evidence in the instant case that the Employer has agreed to be bound to the memorandum. Moreover, we note that in spite of the agreement the Laborers has continued to claim the disputed work with the apparent sanction of the Laborers International.[14] Testimony in support of the Laborers claim was given at the hearing by Carl Booker, the assistant director of jurisdiction

[13] See *Operative Plasterers' and Cement Masons' International Association, Local No. 394, AFL-CIO (Warner Masonry, Inc.)*, 220 NLRB 1074, 1075-76 (1975); *Local 361, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO (Concrete Casting Corp.)*, 209 NLRB 112, 114-115 (1974).

[14] See *Operative Plasterers' and Cement Masons' International Association, Local No. 394, AFL-CIO (Warner Masonry, Inc.)*, *supra* at 1076.

for the Laborers International, and by Al Milak, the International representative of the Chicago region of the Laborers International. Accordingly, we attach no weight to the memorandum of understanding.

6. Impartial Board determinations

The Operating Engineers submitted into evidence 17 decisions of either the Impartial Jurisdictional Disputes Board or the former National Joint Board for the Settlement of Jurisdictional Disputes. The decisions, which range in time from 1964 to 1974, all involve disputes between the Laborers and the Operating Engineers over the operation of forklifts in connection with masonry work at various construction sites throughout the State of Wisconsin. The work was awarded to the Operating Engineers in all of the decisions, and it is therefore the contention of the Operating Engineers that this factor favors an award of the disputed work to employees whom it represents.

On previous occasions the Board has refused to accord significant weight to such awards when they fail to explicate the factors upon which they are based.[15] In the instant case the awards consist of brief letters which rely on either the 1954 agreement between the two Internationals, discussed *supra*, or a 1907 decision apparently made by the American Federation of Labor.[16] The letters do not set forth any other factors as a basis for the award. As indicated above, we do not attach any weight to the 1954 memorandum of understanding, and the record sheds little light on the 1907 decision by the American Federation of Labor. Moreover, we note that the Employer is not obligated to submit any dispute to the Impartial Jurisdictional Disputes Board, and the decisions submitted in evidence are not binding on the Employer.[17] We therefore accord the decision no weight in determining the award of the disputed work.

7. Employer preference

The Employer originally assigned the disputed work to employees represented by the Laborers, and it has expressed its clear preference that the disputed work be awarded to those employees. Accordingly, we find that this factor favors an award to employees represented by the Laborers.

Conclusion

Upon the record as a whole, and after full consideration of all relevant factors involved, we conclude that employees who are represented by the Laborers are entitled to perform the work in dispute. We reach this conclusion relying on the factors of the collective-bargaining agreements, employer practice, and employer preference. In making this determination, we are awarding the work in question to employees who are represented by the Laborers, but not to the Union or its members. The present determination is limited to the particular controversy which gave rise to this proceeding.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board hereby makes the following determination of dispute:

1. Employees of McWad, Inc., who are represented by Laborers International Union of North America Local 1359 are entitled to perform the work of operating forklifts and skid loaders used in connection with McWad, Inc.'s masonry work at the construction site of the Employer's Insurance of Wausau Training Center in Wausau, Wisconsin.

2. International Union of Operating Engineers, Local No. 139, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require McWad, Inc., to assign the disputed work to employees represented by that labor organization.

3. Within 10 days from the date of this Decision and Determination of Dispute, International Union of Operating Engineers, Local No. 139, shall notify the Regional Director for Region 30, in writing, whether or not it will refrain from forcing or requiring the Employer, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the disputed work in a manner inconsistent with the above determination.

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[15] See *Operative Plasterers' and Cement Masons' International Association, Local No. 394, AFL-CIO (Warner Masonry, Inc.), supra* at 1075-76; *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Plumbers Local No. 219 (Price Brothers Company*, 174 NLRB 547, 550 (1969).

[16] The pertinent portions of two typical awards read as follows:

> It has been agreed between the two International Unions involved that the operation of forklift shall be assigned to Operating Engineers.
>
> Contractor is directed to proceed with work on this basis.
>
> The Joint Board voted to make the following job decision:
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> The work in dispute is governed by the decision of record of November 11-23, 1907, and shall be assigned to Operating Engineers.

[17] See *Operative Plasterers and Cement Masons International Association, Local Union No. 21 (Universal Terrazzo & Tile Co.)*, 218 NLRB 512, 514 (1975).